

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

March 29, 2013

- I. **ATTENDANCE** - The Vice-Chair called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on March 29, 2013. Members present were Vice-Chair Kathryn Moore, Noel White, Joseph Smith, Janice Meyer, James Griggs and Thomas Glover. Chair Barry Stumbo was absent. Others present were Chuck Saylor, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones and Mike Sanner, Department of Law. Staff members in attendance were Jimmy Emmons, Bill Saltee and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Vice-Chair announced that the minutes of the January 25, 2013 and February 22, 2013 meetings would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve the minutes of the January 25, 2013 and February 22, 2013 meetings.

Swearing of Witnesses – Prior to sounding the agenda, the Vice-Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Vice-Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Vice-Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2013-13: CHAD DICKEN** - appeals for a conditional use permit to establish a garden center and future plant nursery in an Agricultural Urban (A-U) zone, at 3280 Clays Mill Road. (Council District 9)

The Staff Recommends: Disapproval, for the following reason:

1. The proposed conditional use will not meet the following minimum requirements of the Zoning Ordinance:
 - a) This use is not proposed to be “operated in conjunction with a commercial greenhouse or plant nursery on the same premises” as required by Article 8-4(d)(3).
 - b) The subject lot does not meet the minimum size requirements (of 10 acres) set forth by Article 8-4(f) for garden center uses. Further, the proposed retention of the existing single family dwelling on the property will further limit the available portions of this two-acre property for the proposed use.
 - c) The proposed off-street parking area of this garden center, by proposing the use of only gravel for twelve parking spaces and the associated drive aisles, will not meet the requirements of Article 16-2(e).

Representation – Mr. Chad Dicken, appellant, was present to request a postponement of the subject appeal until the April 26 meeting, in order to address the case-related concerns of the neighborhood association and the staff.

Vice-Chair Moore asked whether the audience members present for this appeal had any objection to the requested postponement. Ms. Lynne Lawrence and Ms. Janet Cabaniss responded that they were not opposed to the postponement request.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (Stumbo absent) to postpone **C-2013-13: CHAD DICKEN** until the April 26 meeting.

2. **No Discussion Items** - The Vice-Chair asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further

discussion. For any such item, the Board will proceed to take action.

- a. **V-2013-16: JAMES J. & SARA S. MAGGARD** - appeal for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to expand an existing garage in a Single-Family Residential/High Density Apartment/Historic District Overlay (R-1C/R-4/H-1) zone, at 114 Barberry Lane. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare. It will not alter the character of the vicinity or cause a nuisance to the public, since a detached garage has existed in this location for the past 75 years.
2. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the requested variance will allow the property owner to retain the historical layout of this residential property.
3. The subject property was platted and developed prior to the adoption of the current Zoning Ordinance, particularly Article 15-6(a)(3), which now requires the increased side yard setback for accessory structures when located between the property line and the principal structure.
4. Strict adherence to the Zoning Ordinance would necessitate the re-location of the garage further to the rear yard, negating the long-standing role this lot has uniquely held as a transitional lot between the shallower and deeper lots on Barberry Lane. In addition, it would greatly reduce the buffering between this lot and the adjoining townhouse development on Nicholasville Road.
5. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant has received approval of the design and location of the new accessory structure from the Board of Architectural Review, and now seeks the requested variance in order to obtain the necessary building permits prior to demolition and construction.

This recommendation of approval is made subject to the following condition:

1. That all applicable permits, including a Certificate of Appropriateness from the Historic Preservation office and a Building Permit for the construction of the garage from the Division of Building Inspection, be obtained prior to the construction.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. James Maggard, appellant, was present. He indicated that he had read and understood the staff's recommendation and agreed to abide by the recommended condition.

There were no questions or comments from the Board.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried unanimously (Stumbo absent) to approve **V-2013-16: JAMES J. & SARA S. MAGGARD** (a variance to reduce the required side yard from 8 feet to 1.5 feet in order to expand an existing garage in a Single-Family Residential/High Density Apartment/Historic District Overlay [R-1C/R-4/H-1] zone at 114 Barberry Lane) as recommended by the staff and subject to the single condition.

- b. **V-2013-17: XINCAI DONG** - appeals for variances to: 1) reduce the required number of parking spaces for a restaurant within the defined Infill & Redevelopment Area by 50%; and 2) increase the allowable 300-foot distance from the parking area to 1100 feet in a Neighborhood Business (B-1) zone, at 289 South Limestone. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variances should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. The applicant has demonstrated that based on the high volume of foot traffic, this proposed restaurant will need significantly less parking than other restaurants in more suburban settings. Additionally, the urban setting of downtown Lexington is a pedestrian-friendly environment with many existing on-street public (metered) parking options for customer demand.

2. Granting the requested variance will not negatively alter the pedestrian-oriented character of the immediate area. It promotes the smart use of existing buildings and parking in the area because the applicant is proposing to utilize parking within an existing garage and not attempting to provide new surface parking.
3. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, as this site was 100% developed prior to the requirement for parking, and there is no opportunity to provide on-site parking for this project.
4. The variance is not a result of the willful actions of the appellant, as their needs do not warrant a full complement of 15 parking spaces at this location. In addition, an ordinance has been initiated by the Urban County Council to allow designation of pedestrian-oriented business districts that may have parking requirements significantly reduced or eliminated. The subject property is just on the edge of the first area under consideration for this designation (S. Limestone Street).
5. Requiring the full amount of parking for this restaurant, where the requirement far exceeds the demand, will require an additional financial burden and hardship to the appellant in order to procure off-site parking agreements in perpetuity.

This recommendation of approval is made subject to the following conditions:

1. The applicant will provide documentation of a renewable parking agreement for at least 8 parking spaces for the proposed restaurant prior to issuance of a Zoning Compliance Permit.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to the operation of the restaurant use on the subject property.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Xincai Dong, appellant, was present. He indicated that he had read and understood the staff's recommendation and agreed to abide by the conditions for approval.

There were no questions or comments from the Board.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **V-2013-17: XINCAI DONG** (variances to: reduce the required number of parking spaces for a restaurant within the defined Infill & Redevelopment Area by 50%; and increase the allowable 300-foot distance from the parking area to 1,100 feet in a Neighborhood Business [B-1] zone at 289 South Limestone) as recommended by the staff and subject to the two conditions recommended by the staff.

- c. **V-2013-18: AMINA SHALASH** - appeals for a variance to reduce the required 30-foot setback along Alumni Drive to 20 feet in order to construct an in-ground pool in a Single-Family Residential (R-1C) zone, at 1929 Long Pond Walk. (Council District 5)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance will not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity, as the pool will be screened from the road and adjoining properties by an existing 8' tall brick wall.
2. Granting the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The request is reasonable based on the small size of the rear yard and limited design options available on the subject lot.
3. The circumstance that justifies the requested variance is that the property has two front yards, based on the requirements of the Zoning Ordinance, one of which functions as a rear yard.
4. Strict application of the Zoning Ordinance would require that the pool and spa be moved very close to the existing house, despite the screening provided by the existing wall, which would likely detract from the overall appeal and usefulness of the rear yard activity area for this family.
5. This variance is not the result of an action by the appellant, as no construction has begun for this property improvement.

This recommendation of approval is made subject to the following conditions:

1. The in-ground swimming pool shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division Building Inspection and the Fayette County Health Department prior to construction
3. An administrative action plat reflecting action of the Board shall be filed with the Division of Planning in accordance with the requirements of the Subdivision Regulations.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Ms. Amina Shalash, appellant, was present. She indicated that she had read and understood the staff's recommendation and agreed to abide by the conditions for approval.

There were no questions or comments from the Board.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **V-2013-18: AMINA SHALASH** (a variance to reduce the required 30-foot setback along Alumni Drive to 20 feet in order to construct an in-ground pool in a Single-Family Residential [R-1C] zone at 1929 Long Pond Walk) as recommended by the staff and subject to the three conditions recommended by the staff.

- d. **C-2012-47: NADIA ALI BENALI** - requests a 6-month review of a conditional use permit approved in August 2012 for a home occupation (tutoring) in a High Density Apartment (R-4) zone, at 368 Shoreside Drive. (Council District 7)

In August of 2012, the Board approved a conditional use permit for a home occupation, subject to five conditions, one of which was a 6-month review after issuance of a Certificate of Occupancy to determine if there had been any adverse impact to surrounding property owners and to determine compliance with the following conditions:

1. Tutoring shall be provided in accordance with the submitted application.
2. All necessary permits, including issuance of an occupancy certificate, shall be obtained from the Divisions of Planning and Building Inspection within 30 days of the Board's approval.
3. Students shall be limited to one at a time unless they arrive in the same vehicle.
4. This conditional use shall become null and void should the appellant no longer reside at this location.
5. The Board shall review this application in six months, with notice to the neighborhood association.

The Staff will report at the public hearing.

Mr. Emmons informed the Board that the applicant was on a scheduled vacation and was unable to attend today's meeting. He said there had been no complaints received about the operation of the tutoring service offered at the subject property during the interim; and that the staff was recommending continuance of the approved use and saw no reason to object to it. He said the Board could choose to either take action on this item today, since there was no opposition present, or to postpone it.

Action – A motion was made by Mr. Griggs to approve **C-2012-47: NADIA ALI BENALI** (request for a 6-month review of a conditional use permit approved in August 2012 for a home occupation [tutoring] in a High Density Apartment [R-4] zone at 368 Shoreside Drive) in that there are no complaints and no opposition.

Discussion - Mr. Glover asked the staff how often this conditional use would be reviewed. Mr. Emmons said, based on the motion that was made, the staff would anticipate that this would be on the normal annual review of all conditional uses by the Zoning Enforcement staff. Mr. Glover then asked if this item would be back on the docket in a year. Mr. Emmons responded no, that it would not be, unless there was a reason during the annual visit to bring this item back before the Board.

The motion for approval of the 6-month review was seconded by Mr. Glover and carried unanimously (Stumbo absent).

Note: Mr. Emmons noted at this time that signs were posted for each request on today's agenda for Conditional Use permits; and that notices were mailed to nearby neighborhood associations as well.

- e. **CV-2013-15: UNIVERSAL HOMES OF KY** - appeals for a conditional use permit to establish an assisted living facility; and a variance to reduce the required 25-foot setback from a floodplain to 5 feet in a Professional Office (P-1) zone, at 2141 Executive Drive. (Council District 6)

The Staff Recommends: Approval of the Conditional Use, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an assisted living facility is an appropriate transition between existing commercial development to the south and east, and the residential uses to the north and west.
2. All necessary public facilities, including any modifications to the stormwater system as deemed necessary by the Divisions of Engineering and Water Quality, will be available and adequate for this use.

The Staff Recommends: Approval of the Floodplain Setback Variance to ten (10) feet, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, as the location of the proposed building is about 30' from the floodplain as approved by FEMA on Conditional Letter of Map Revision (CLOMR) case #05-04-2989R; and all of the necessary floodplain improvements for the subject property are completed and functioning properly, as per the approved CLOMR.
- b. The proposed structure is not located in the regulatory floodplain.
- c. Upon completion of all floodplain modifications in the overall development of Bluegrass Executive Park, and approval by FEMA on the final Letter of Map Revision (LOMR), this requested floodplain setback variance will no longer be necessary. Thus, there would be no circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship for the appellant, since a client has chosen this lot, and the issuance of the LOMR appears to be some time in the near future.
- e. The variance is not the result of the appellant's actions, as the development of this lot and its current grading preceded the requirement for a 25' floodplain building setback.

This recommendation of approval is made subject to the following conditions:

1. Construction of the assisted living facility shall be done in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. No building permits shall be issued until the Planning Commission approves a final development plan for the subject property, and that plan is certified.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the building.
4. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance. In addition, zone-to-zone screening shall be provided as required by the Zoning Ordinance prior to the issuance of any permits for occupancy.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering and the Division of Water Quality.
6. Action of the Board shall be reflected on the Final Development Plan for the property.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Tom Hatfield, with E A Partners, was present on the appellant's behalf. He indicated that he had read and understood the staff's recommendation and agreed to abide by the conditions for approval.

Discussion - For clarification, Vice-Chair Moore asked if there will be only two employees on the maximum shift. Mr. Hatfield responded that Mr. David Denham, who also was present, would be able to provide details of the operation.

Mr. Denham, with Hometown Manor, responded that this 15-unit assisted living facility has to meet criteria that basically involves mobility and safety concerns; and that the maximum number of employees during the day is two. He said two employees are very sufficient to cover any needs the occupants at the facility might have; and that the Department for Aging and Independent Living does not specify the number of employees per number of residents. It was noted that assisted living facilities are regulated by the State and bi-annual inspections are conducted.

Mr. Emmons pointed out one technical issue regarding the applicant's request that includes a floodplain setback variance to 5 feet. He said the applicant has amended the site plan and now requests a floodplain setback variance from 25 feet to 10 feet, for which the staff is recommending approval. He noted that the building itself will not be in the existing regulatory floodplain; but, rather, its location will be about 30 feet from the floodplain as approved by FEMA on the Conditional Letter of Map Revision (CLOMR), which exceeds the 25-foot minimum setback requirement. He went on to say that, when all floodplain modifications in the overall development are completed and FEMA approves the final Letter of Map Revision (LOMR), this requested floodplain setback variance will no longer be necessary.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **CV-2013-15: UNIVERSAL HOMES OF KY** (a conditional use permit to establish an assisted living facility; and a variance to reduce the required 25-foot setback from a floodplain to 10 feet in a Professional office [P-1] zone at 2141 Executive Drive) for the reasons stated and subject to the six conditions recommended by the staff.

- f. **C-2013-14: BRIAN K. CROWDER** - appeals for a conditional use permit to operate a pawn shop in a Highway Service Business (B-3) zone, at 1206 East New Circle Road. (Council District 5)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking is conveniently available, and the existing building can accommodate the proposed use without the need for any expansion. The subject property is surrounded on all sides by other commercial uses.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The pawnshop shall be established in accordance with the submitted application and site plan, and shall be limited to the 2,500 (+/-) square-foot suite currently proposed.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation; and prior to opening the pawnshop, a Zoning Compliance Permit from the Division of Planning, as well as a Certificate of Occupancy from the Division of Building Inspection shall be obtained.
3. Pawning of vehicles shall not take place at the subject property, and vehicles pawned at other locations shall not be stored on site.
4. The applicant will maintain all existing vehicular use area screening on the property in accordance with the submitted site plan.
5. All signage shall comply with Article 17 of the Zoning Ordinance.
6. This approval shall become null and void should the appellant cease to occupy the subject property as a pawnshop.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Brian Crowder, appellant, was present. He said he had read and understood the staff's recommendation; however, with respect to Condition #3, he asked if it would be possible to store pawned vehicles off site. He related to the Board that he understood there was no place to store vehicles there; and that he would like the opportunity to make loans against the vehicles and

store them off site, with the permission and understanding of the customer.

Mr. Emmons responded that the submitted application was devoid of any information as to whether the applicant would or would not pawn or store vehicles; and the recommended condition by the staff was reflective of that.

There was a brief discussion between Mr. Emmons and Mr. Marx about the wording of the condition in order not to create any zoning enforcement problems. Mr. Marx suggested modifying Condition #3 to read as follows: "Pawned vehicles shall not be stored on site." He said this would account for pawned vehicles from this location or any location. Mr. Crowder concurred with the amended condition. He noted that, in his seven-year experience, they may have one pawned vehicle every three months, or three a year. Mr. Emmons said the staff initially felt that, given the small size of this lot and the configuration of the parking, the pawned vehicles would "eat up" any available parking on the property and become a problem.

Since there were no further questions or comments, the Vice-Chair called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **C-2013-14: BRIAN K. CROWDER** (a conditional use permit to operate a pawn shop in a Highway Service Business [B-3] zone at 1206 East New Circle Road) based on the staff's recommendation and subject to the six conditions, including the modification of Condition #3 as stated herein.

- g. **AC-2013-12: SUSAN RICHIE** - appeals for an administrative review to determine that breeding and raising hedgehogs should be considered a home occupation; if determined as such, a conditional use permit for a home occupation in a Single-Family Residential (R-1E) zone, at 1589 Springfield Drive. (Council District 8)

The Staff Recommends: Approval of the Administrative Appeal, for the following reasons:

1. The commercial breeding and raising of hedgehogs, when contained within a 100 square-foot area such as a bedroom, is not substantially similar to a commercial kennel (prohibited in residential zones), primarily due to small size and quiet nature that allows the hedgehogs to be bred and raised completely indoors.
2. Furthermore, the applicant has demonstrated that this proposed use does meet the criteria for consideration as a "gainful occupation," incidental to the residential use of a single family residential property, as defined in Article 1-11 of the Zoning Ordinance.

The Staff Recommends: Approval of the requested Conditional Use, for the following reasons:

- a. This proposed use meets the criteria for approval as a home occupation, incidental to the residential use of the property, as defined in Article 1-11 of the Zoning Ordinance.
- b. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the activities and operations will be confined to a single bedroom within the house. The breeding and raising of hedgehogs will not have any effect on the exterior of the property, and the "point of sale" for these animals will be conducted off site. The applicant's operation will ensure that additional traffic, noise, and odors will not be generated by this use.
- c. All necessary public facilities and services are available and adequate for the proposed use, including police and fire protection and sanitary sewer service. With deliveries of the animals to other locations, local roadways are adequate for this home occupation to minimize disruptions to neighbors.

This recommendation of approval is made subject to the following conditions:

1. The applicant shall conduct this home-based business in accordance with the submitted application and site plan.
2. No other type of animal may be bred and raised on the premises.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to issuance of a local business license.
4. This use shall comply with the requirements of the federal Animal Welfare Act. In addition, this use shall be subject to certification and/or licensure by the United States Department of Agriculture (USDA), as necessary.

5. A program for veterinary care shall be set in place for this use to ensure safe and responsible animal husbandry practices.
6. Should the applicant cease operation of this home occupation, this permit shall become null and void.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Ms. Susan Richie, appellant, was present. She indicated that she had read the staff's recommendation and was willing to abide by the conditions for approval.

Two letters received by the staff with respect to this appeal were submitted to the Board.

Discussion - Mr. Glover asked why the applicant chose to raise hedgehogs. Ms. Richie responded that they make fine pets and are hypoallergenic; and they benefit the homes that are allergic to most pets, like the applicant's household. Mr. Glover then asked about the size of the hedgehogs. Ms. Richie replied that one of the hedgehogs they have weighs approximately two pounds and is about the size of a soft ball.

Ms. Meyer referred to an e-mail in which a neighbor related concern about safety and possible health related issues that may arise as a result of hedgehogs coming into contact with humans, as well as neighborhood dogs and cats. Ms. Richie responded that she understood the concern, having children herself. She stated that they worked closely with the USDA, under the Animal Welfare Act (AWA), to establish a formal veterinary care program, which includes sanitary waste disposal methods; and that her facility received an above satisfactory review of its conditions on the first inspection. She said a licensed veterinarian came to the facility and approved the conditions, noting his assessment that the environment was clean, very organized and above satisfactory conditions. She submitted the letter to the Board for review.

Mr. Griggs asked if the hedgehogs could survive in the wild of Kentucky. Ms. Richie responded that they would not, because they are domesticated; and they are unable to hibernate, as wild ones do. She said, when breeding and raising hedgehogs, the room temperature must not be below 70 degrees. Mr. Griggs then asked if Ms. Richie was aware of any diseases that could be passed on to domesticated cats and dogs, to which she responded no.

Mr. Glover asked how many hedgehogs the applicant would be raising, with respect to the size of the operation. Ms. Richie estimated that she currently has less than 30 hedgehogs. She said she did not want to have a large operation and was not interested in money; and that she wanted to give the hedgehogs the best care and treatment, which she did not think would be possible with a large number of animals. She said, at present, they sell about four hedgehogs a month.

Vice-Chair Moore asked how long the applicant has been operating. Ms. Richie stated that her 17 year-old daughter initially started the operation, which she subsequently took over due to the lengthy process of getting USDA certification; and that she has been operating for about a year. In response to Vice-Chair Moore's inquiry about not having a conditional use permit, Ms. Richie said they have a sales tax number and are totally legitimate; and that they were advised by a tax consultant to get a business license, which is when she found out about the need to have a conditional use permit for the operation. She said she was totally unaware that a conditional use permit was necessary.

Mr. Griggs asked about the price of a hedgehog. Ms. Richie said it really is based on supply and demand; and that the hedgehogs currently sell for \$300 each. However, she said the price could go down once the demand increases.

Mr. Glover asked who regulates this business. Ms. Richie replied the USDA. Mr. Glover then asked if they conduct inspections. Ms. Richie responded that the USDA does conduct annual inspections to ensure compliance with all AWA regulations and standards, noting that a pre-license inspection of the facility and conditions was done on March 18th. She said that a licensed veterinarian also would conduct an inspection every 6 months.

Mr. Griggs asked about the possibility of setting a precedent with respect to this appeal. Mr. Emmons responded that the way the Division of Planning (staff) looked at this request was first as an administrative appeal, in order to determine whether the applicant's breeding operation is allowable as a home occupation. He said the staff, in looking at this issue, did see a material difference between indoor animals and outdoor animals; and if someone came in with a substantially similar request for a home occupation, depending on the Board's decision today, they would be referred to the Board for either an administrative review and/or a conditional use. He said based on the decision that the Board makes regarding the administrative review portion of this appeal, the staff will look at the facts of this case and applicability in future cases.

Mr. Griggs commented that, to his recollection, this is the first time that there has been an appeal for an animal breeding operation in a residential zone. Mr. Emmons said the staff was unable to find another application of this nature on which to base their determination, which is the reason for the administrative appeal first and then the conditional use.

Mr. Sallee noted that the closest case the staff could find was one over 10 years ago, in which an application was made for a home occupation to rescue puppies on a short-term basis. He said the Board did approve the applicant's request because it was obviously different from a commercial kennel, given the facts of that case.

In response to Mr. Griggs' further inquiry, Mr. Emmons said he believed the staff would apply the same logic to a similar appeal as this one. He said if an applicant were in need of an outdoor area to handle their breeding operation, the staff would look at that as being substantially similar to a kennel. He went on to say that the staff, in this instance, felt this is an allowable home occupation because of the small size and quiet, indoor nature of the type of animal the applicant is breeding.

Mr. Glover asked if the distinction was indoor versus outdoor. Mr. Sallee replied that was half of the equation; but the other important half that the staff reviewed was finding out whether there are any Health Department regulations for this particular animal. It was noted that Animal Control was contacted as well. Mr. Sallee said regardless of the animal, this is something the staff would ordinarily do and want to report to the Board what applicable regulations were in place.

Mr. Glover related his understanding that the hedgehogs the applicant raises are hypoallergenic. Ms. Richie responded that is correct. She stated that hedgehogs are capable of being maintained continuously in cages; they do not produce noise; and to ensure maintenance of a clean and healthy condition with no odor, she properly disposes of animal waste in a sanitary manner according to the regulations of the USDA and the AWA.

Vice-Chair Moore referenced the Zoning Ordinance's definition of a home occupation and the related conditions that have to be met. With respect to the examples of uses that are listed, she noted that what the applicant proposes clearly is different from any of them. She asked the staff if, other than the dog rescue appeal, there were any other approved home occupations that were clearly different from the examples listed in the Ordinance. Mr. Emmons replied yes, but was unable to recall the case(s) at this time.

Mr. Marx offered that, on the other hand, there was the question of whether the proposed use/activity is similar to the examples that are specifically listed as prohibited, which it is not.

Mr. Emmons noted that the applicant's proposal does comply with the eight criteria/conditions listed for a home occupation, which he reviewed and briefly commented on.

Ms. Meyer said she was trying to think of other animals that someone might want to raise in their home, as a home occupation. She said it would be upsetting to her if she found out about a neighbor who was raising snakes, for example. She asked where the line would be drawn on this issue. Mr. Emmons responded that the staff had contacted the Fayette County Animal Control office regarding their regulations, which are applicable to warm blooded animals (mammals and birds). He said, as an example, if someone were to come in with a request for a fish or reptile breeding program as a home occupation, it would be a material difference and the staff would again review the proposal in detail before making a recommendation to the Board. He stated that he did not think the Board's approval today of the hedgehog operation would be substantially

similar to a reptile breeding operation.

Ms. Meyer made a follow-up comment about someone raising cats and rabbits, which can be indoors and/or outdoors. Mr. Emmons responded that the staff would ask pertinent questions to determine how similar the next person's operation is to the one that is before the Board today; and as a result, the prospective applicant would need to submit either an administrative appeal (to make the case that a particular home occupation should be allowed), a conditional use appeal (to request a specific home occupation) or a combination of the two, as Ms. Richie did.

Mr. Emmons said, to make the Board more comfortable, and for clarification purposes (with regard to potentially setting a precedent), the staff was offering the following amendment of finding "a" under the recommendation for approval of the administrative appeal:

- a. The commercial breeding and raising of hedgehogs, when contained within a 100 square-foot area such as a bedroom, is not substantially similar to a commercial kennel (prohibited in residential zones), primarily due to the small size and quiet nature that allows domesticated hedgehogs to be bred and raised completely indoors; and they cannot survive outdoors.

(The amended recommendation was shown on the overhead projector for the Board's consideration.)

Mr. Glover said he was persuaded that hedgehogs are benign and can be raised in residential areas. However, he still had some lingering concerns about where to draw the line, considering the potential for setting a precedent with the approval of this appeal.

Ms. Meyer reiterated the point that domestic hedgehogs cannot survive outside in temperatures below 70 degrees, whereas cats and rabbits can. She felt that some guidance from the staff was necessary.

Ms. Richie added that the hedgehogs she raises cannot survive outside in temperatures over 85 degrees for a certain amount of time.

A brief discussion involving the Board, the staff and the appellant followed. Mr. Glover said he was looking for a way to grant this application without providing a foothold for other applications for species that are considered pests, such as rats; and that he could see someone making a legal argument that if hedgehogs can be bred and raised as a home occupation, then why not a rat breeding operation, for instance.

Mr. Gary Richie was present to speak in strong support of his wife's proposal to raise hedgehogs as a home occupation. He said there has not been a BOA appeal of a similar nature in 10 years, as the staff indicated; and that they are trying to set an example for their children with respect to complying with all applicable regulations to legally operate the home occupation. He noted that potential customers are not served on site; and there are no delivery trucks coming to the property. He spoke about how diligently his wife has worked with respect to the hedgehog operation, including the completion of her USDA certification and a Program of Veterinary Care; and the care she takes of these quiet-natured animals. He asked for the Board's favorable consideration of this request.

Mr. Griggs commented that he appreciated what Mr. Richie was saying; and that one of the reasons why there have not been a lot of applications for raising animals in a residential area is because both Building Inspection and the staff have informed potential applicants that it is simply not allowed. He stated that the appellants have taken this to the next level, for which they were commended; and that this is a special situation. However, he said he also could see the potential for a number of applications from people wanting to raise animals in their homes, given the economy and the need for extra income; and this could become a problem. He said the Board was trying to consider what was good for the community as a whole.

Ms. Richie reiterated about the veterinary care program that is in place for this use, to ensure safe and responsible animal husbandry practices, and passing the veterinarian inspection conducted

once a year of the overall condition of the hedgehogs and the facility. She spoke about the tedious process of becoming USDA certified (including stringent inspections), which is regulated under the AWA. She felt that if these things are mandatory for each prospective applicant seeking to raise animals of some kind in their home, it would weed out a number of those applications.

Vice-Chair Moore queried whether it would be helpful to include, as part of the justification for approval, that this use is regulated by an outside agency (USDA). For clarification, she asked if the USDA also regulated snakes. Mr. Emmons responded that he didn't know about the USDA's regulations for snakes; but that he checked with the local Animal Control office and was informed that snakes and other cold-blooded animals are regulated through the State, under the Wildlife regulations. He said he didn't do any further research into snakes because he was concentrating on the application at hand.

Mr. Emmons reiterated that the staff wished to offer, based on the evidence presented, an amendment to the findings for approval of the administrative review portion of the appeal that would allow domesticated hedgehogs to be bred and raised completely indoors; and that they cannot survive outdoors in the wild.

Mr. Glover asked if there was a need to come back and look at this in six months or a year. Mr. Griggs said he was convinced that this operation would be benign in the neighborhood; however, he still had a lingering concern about "putting this on the books." Mr. Glover said he shared Mr. Griggs' concern about possibly setting a precedent, noting that almost every Conditional Use the Board grants has that potential. However, he said he was comforted by the added language provided by the staff (for approval of the Administrative Appeal) and the testimony provided by the applicant; and that he was prepared to vote.

Since there were no further comments or questions, the Vice-Chair called for a motion.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs, and carried unanimously (Stumbo absent) to approve **AC-2013-12: SUSAN RICHIE** (an administrative review to determine that breeding and raising hedgehogs should be considered a home occupation; and a conditional use permit for a home occupation in a Single-Family Residential [R-1E] zone at 1589 Springfield Drive) for the reasons set forth by the staff, including the amendment of reason "a" as noted herein; and subject to the conditions recommended by the staff.

Both Mr. and Mrs. Richie thanked the Board for their time.

- B. **Transcript or Witnesses** - The Vice-Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

None Remaining

- D. **Conditional Use Appeals**

None Remaining

E. **Administrative Review**

None Remaining

IV. **BOARD ITEMS** - The Vice-Chair announced that any items a Board member wished to present would be heard at this time.

- A. **Closed Session** – A motion was made by Ms. Moore, seconded by Mr. Glover, and carried unanimously (Stumbo absent) for the Board to meet in closed session, pursuant to KRS 61.8101(c), for the purpose of discussing two matters of pending litigation.

Ms. Moore subsequently moved to go back into open session, and on record.

Action – With respect to the matter of C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES, a motion was made by Mr. Glover and seconded by Ms. White to authorize the Department of Law to enter into an agreed order in Fayette Circuit Court Case #12-CI- 3113 to extend the revocation date of a conditional use permit for property at 824 Winchester Road for 120 additional days from the original deadline of April 8th, with specific conditions of due diligent efforts being made to locate and move to a permanent location; and identify temporary locations if a permanent move cannot be made in the 120-day extension.

Votes were as follows:

Ayes: Smith, Moore, White, Glover

Nays: Meyer, Griggs

Absent: Stumbo

The motion carried, 4 to 2.

V. **STAFF ITEMS** - The Vice-Chair announced that any items a Staff member wished to present would be heard at this time.

- A. **Retirement of Jim Gallimore** - Mr. Sallee noted that LFUCG Traffic Engineer Jeff Neal was present on behalf of Mr. Jim Gallimore, who was retiring, effective today. He said the staff would miss Mr. Gallimore's contributions to the BOA meetings and wished him well in his retirement.

VI. **NEXT MEETING DATE** - The Vice-Chair announced that the next meeting date would be April 26, 2013.

VII. **ADJOURNMENT** - Since there was no further business, the meeting was adjourned at 3:29 p.m.

Kathryn Moore, Vice-Chair

James Griggs, Secretary